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DeGroot v. Standley Trenching, Inc. Appellant's Brief 2 Dckt. 39406

IN THE SUPREME COURT OF THE STATE OF IDAHO

CHARLES DeGROOT, and DeGROOT FARMS, LLC, Plaintiffs/Appellants, -vs- STANDLEY TRENCHING, INC., d/b/a STANDLEY & CO., Defendant/Respondent.	**DOCKET NO. 39406-2011** Canyon County Case No. CV 2001-7777

BRIEF IN SUPPORT OF APPELLANTS' PETITION FOR REHEARING

Appeal from the District Court of the Third Judicial District for Canyon County
Honorable Gregory M. Culet, District Judge presiding.

ATTORNEYS FOR APPELLANTS

Kevin E. Dinius
Michael J. Hanby II
Dinius & Associates, PLLC
5680 E. Franklin Road, Suite 130
Nampa, Idaho 83687

ATTORNEYS FOR RESPONDENT

M. Michael Sasser
SASSER & INGLIS, PC
P.O. Box 5880
Boise, ID 83705

Robert D. Lewis
CANTRILL, SULLIVAN & KING
P.O. Box 359
Boise, Idaho 83701

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I.
INTRODUCTION

The narrow issue addressed in this *Brief in Support of Appellants' Petition for Rehearing* is the meaning of the name "DeGroot Dairy" as it appears in the written construction bid between Defendant Standley Trenching, Inc. (hereinafter, "Standley") and Beltman Construction, Inc. (hereinafter, "Beltman").[1] Because Charles DeGroot and DeGroot Farms, LLC (hereinafter, "DeGroot"), Standley, and this Court in its Memorandum Decision each assert a different, and potentially reasonable, interpretation of the term, the contract for the construction of the DeGroot Dairy manure handling system must be found to be ambiguous. As a result, the circumstances surrounding the formation of the agreement and construction of the DeGroot Dairy manure handling system must be examined. When viewed in a light most favorable to DeGroot, a genuine issue of material fact regarding the intention to benefit DeGroot exists. Therefore, the dismissal of DeGroot's claims on summary judgment must be reversed and the case remanded for a trial on the merits.

II.
ARGUMENT

A. Standard of Review

Summary judgment under I.R.C.P. 56(c) is proper only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. On appeal, this Court exercises free review in determining whether a genuine issue of material fact exists and

[1] Although the bid itself does not list "Beltman Construction, Inc." nor is it signed by "Standley Trenching, Inc." Rather, the bid references "Stan Beltman" and is signed by "Kurt Standley." R.Vol. IV, p. 604.

whether the moving party is entitled to judgment as a matter of law.[2] When assessing a motion for summary judgment, all controverted facts are to be liberally construed in favor of the nonmoving party. Furthermore, the trial court must draw all reasonable inferences in favor of the party resisting the motion.[3]

The party moving for summary judgment initially carries the burden to establish that there is no genuine issue of material fact and that he or she is entitled to judgment as a matter of law.[4] The burden may be met by establishing the absence of evidence on an element that the nonmoving party will be required to prove at trial.[5] Such an absence of evidence may be established either by an affirmative showing with the moving party's own evidence or by a review of all the nonmoving party's evidence and the contention that such proof of an element is lacking.[6] Once such an absence of evidence has been established, the burden then shifts to the party opposing the motion to show, via further depositions, discovery responses or affidavits, that there is indeed a genuine issue for trial or to offer a valid justification for the failure to do so under I.R.C.P. 56(f).[7]

The United States Supreme Court, in interpreting Federal Rule of Civil Procedure 56(c), which is identical in all relevant aspects to I.R.C.P. 56(c), stated:

> In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who

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[2] *Edwards v. Conchemco, Inc.,* 111 Idaho 851, 852, 727 P.2d 1279, 1280 (Ct.App. 1986).
[3] *G & M Farms v. Funk Irrigation Co.,* 119 Idaho 514, 517, 808 P.2d 851, 854 (1991); *Sanders v. Kuna Joint School Dist.,* 125 Idaho 872, 874, 876 P.2d 154, 156 (Ct.App. 1994).
[4] *Eliopulos v. Knox,* 123 Idaho 400, 404, 848 P.2d 984, 988 (Ct.App. 1992).
[5] *Dunnick v. Elder,* 126 Idaho 308, 311, 882 P.2d 475, 478 (Ct.App. 1994).
[6] *Heath v. Honker's Mini-Mart, Inc.,* 134 Idaho 711, 712, 8 P.3d 1254, 1255 (Ct.App. 2000).
[7] *Sanders,* 125 Idaho at 874, 876 P.2d at 156.

> fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is "entitled to judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof.[8]

The language and reasoning of *Celotex* has been adopted in Idaho.[9]

B. Because the bid contract is susceptible to differing reasonable interpretations, a question of fact as to whom the contract was intended to benefit exists.

From the outset of this case, DeGroot has taken the position that the reference to "DeGroot Dairy" on the bid contract references DeGroot as an intended beneficiary of the contract. This is clearly a reasonable interpretation based on the plain language of the bid contract – even without analyzing the surrounding circumstances of the case. In addition to the name "DeGroot Dairy," the bid contains the names Stan Beltman and Kurt Standley.[10] Given the informal nature of the bid contract, the inclusion of "DeGroot Dairy" as a party to the agreement certainly raises a genuine issue of material fact with respect to the intent of the parties.

The common phrase of 'who,' 'what,' 'when,' 'where,' or 'why' provides an apt framework to analyze the use of the name "DeGroot Dairy" in the written bid contract. As stated above, using DeGroot's analysis, the name "DeGroort Dairy" in the bid contract refers to

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[8] *Celotex Corp. v. Catrett,* 477 U.S. 317, 322-23, 106 S.Ct. 2548, 2552-53, 91 L.Ed.2d 265, 273-74 (1986) (citations omitted).
[9] *Dunnick,* 126 Idaho at 312, 882 P.2d at 479.
[10] R. Vol. IV, p. 604.

DeGroot as an intended beneficiary of the contract. In other words, "DeGroot Dairy" refers to the "who."

In its briefing, Standley argues that the written bid contract is not ambiguous and does not show any intent to benefit DeGroot.[11] Standley does not dispute that the bid contract contains the name "DeGroot Dairy."[12] Standley argues that the name "DeGroot Dairy" is "a reference to the project name."[13] In other words, using the 'who,' 'what,' 'when,' 'where,' or 'why' framework, Standley argues that the name "DeGroot Dairy" signifies the 'what.'

The Court, however, adopted neither DeGroot's nor Standley's interpretation of that term and found that the name "DeGroot Dairy" in the bid contract referenced the "where." This Court stated:

> The single appearance of "DeGroot" in the bid contract does not reflect an express intent to benefit DeGroot; rather, it merely reflects where the work is to be done. There is no other language in the contract reflecting an intent to benefit DeGroot.[14]

Because of this conclusion, the Court found the contract to be unambiguous and declined to examine the surrounding circumstances leading to formation.[15]

The problem with the Court's finding that "DeGroot Dairy" references "where" the work is to be done is this: At the time of the bid contract, DeGroot was operating a dairy in Sunnyside, Washington that consisted of 223 acres and 1,250 cows.[16] If "DeGroot Dairy" is found to refer to

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[11] *Respondent's Brief*, pp. 9-10.
[12] *Id.*
[13] *Id.*
[14] Docket No. 39406, p. 6 (emphasis added).
[15] *Id.*, p. 7.
[16] R. Vol. I, p. 98, Deposition of Charles DeGroot, p. 34, ll. 4-12; p. 36, ll. 6-17.

the "where," it is still ambiguous because there is no address or further description to indicate which "DeGroot Dairy" was being referenced without taking into account the circumstances surrounding the construction of the DeGroot dairy in Idaho and the events leading to the formation of the contract with Standley. Further, it would be inappropriate for the Court to resolve the factual dispute surrounding the meaning of "DeGroot Dairy" on the bid given the standard of review utilized at summary judgment.

Ultimately, this Court's decision overlooks the fact that DeGroot, Standley, and the Court each asserted what is arguably a reasonable interpretation of the name "DeGroot Dairy" as it appears in the written bid contract. Because of the three conflicting interpretations of the significance or meaning of "DeGroot Dairy" on the bid, it must be found that the bid contract itself is ambiguous. This necessarily leads to a question of fact over the interpretation of the contract.[17] At summary judgment, it is axiomatic that all inferences must be drawn in favor of the non-moving party. As such, DeGroot is entitled to the inference that the reference to "DeGroot Dairy" in the bid contract references the "who" that would benefit from contract.

Moreover, the reference to "DeGroot Dairy" is even more significant than the reference to the third-party in the contract at issue in the *Blickenstaff* case referenced in this Court's decision. As this Court noted in *Blickenstaff*, the contract in that case contained a future obligations clause that stated "the funds to pay [third-party] M & D Trust for the purchase of its twenty seven (27%) percent interest" would be personally guaranteed.[18] This Court correctly found that clause "does not specifically guarantee" financing would be obtained. *Id.* The

[17] *City of Idaho Falls v. Home Indemnity*, 126 Idaho 604, 888 P.2d 383 (1995).
[18] *Blickenstaff v. Clegg*, 140 Idaho 572, 579, 97 P.3d 439, 446 (2004).

reference to "DeGroot Dairy" in the bid contract, however, is much more significant as the reference shows the parties intended to benefit DeGroot in the construction of the dairy. In fact, the bid contract evidences the obligation of the parties to construct the very dairy DeGroot ordered.

Because the ambiguity created by the reference to "DeGroot Dairy" in the bid raises an issue of material fact regarding the intent of the parties, all of the surrounding circumstances leading to contract formation must be taken into account.[19]

Here, the surrounding circumstances only strengthen DeGroot's argument that it was an intended beneficiary of the contract to construct the dairy. Not only was DeGroot named in the bid contract, but also named as a customer on Standley's invoices and Houle's packing slips.[20] Standley attended the Tolero Agricultural Show in California in February 1999 where Standley marketed Houle equipment to Charles DeGroot and spoke with him specifically about submitting a bid for installation of the manure handling system.[21] After that meeting, Standley bid for the installation of the manure handling system for DeGroot.[22] Standley specifically designed the manure handling system for DeGroot by selecting the motor, the motor specifications including horsepower and voltage, the four-inch pump, pipe size, valves, as well as specifications for the flush system.[23] At the time the contract was entered into, Standley knew that DeGroot would be

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[19] *Stewart v. Arrington Construction Co.*, 92 Idaho 526, 532, 446 P.2d 895 (1968).
[20] R. Vol. IV, p. 703; p. 704; p. 706; p. 707, p. 709; p. 710; p. 712; p. 713; p. 714; p. 717; p. 718; pp. 720-24.
[21] *Id.*, p.674.
[22] *Id.*, pp. 604-07.
[23] *Id.*, pp. 674-76; and R. Vol. III, pp. 461-66.

paying for the construction of the dairy, including installation of the manure handling system.[24] Clearly, Standley knew that DeGroot would be paying for the construction of the dairy, including installation of the manure handling system. Thus, installation of the manure handling system would inure to the benefit of DeGroot upon completion. Furthermore, DeGroot selected Standley to perform the work and Beltman had no say or control over this decision.[25]

These circumstances surrounding the bid contract must be examined because of the ambiguity in the bid contract outlined above. Further, these facts must be viewed in a light most favorable to DeGroot. When done so, it is clear that there is an issue of fact with respect to whom the contract for the construction of the DeGroot Dairy was to benefit.

III.

CONCLUSION

Three differing, and potentially reasonable, interpretations have been provided of the name DeGroot Dairy in the bid contract. As a result, and after considering the circumstances surrounding the construction of the DeGroot Dairy, a genuine issue of material fact exists that prevents determination of the case on a motion for summary judgment. Therefore, it is respectfully requested that this Court reverse the district court and remand for a trial on the merits of the case.

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[24] *Id.*, pp. 674; p.703; p. 704; p. 706; p. 707; p. 709; p. 710; p. 712; p. 713; p. 714; p. 717; p. 718; p. 720; p. 721; p. 722; p. 723; p. 724.
[25] R. Vol. III, p. 446.

DATED this 28th day of April, 2014.

DINIUS LAW

By: _____
Kevin E. Dinius
Michael J. Hanby II
Attorneys for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of April, 2014, I caused to be served a true and correct copy of the foregoing document by the method indicated below to the following:

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